

UT 01-4

Tax Type: Use Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	Docket No. 00-ST-0000
v.	)	
	)	Claim for Exemption
ABC FOUNDATION	)	
Taxpayer	)	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: James Day, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Matthew C. Potts of Whitney & Potts, Ltd. for ABC Foundation.

Synopsis:

The ABC Foundation (“taxpayer”) applied to the Department of Revenue (“Department”) for an exemption identification number so that it could purchase tangible personal property at retail free from the imposition of use and related taxes. The Department denied the application, and the taxpayer timely protested the denial. An evidentiary hearing was held during which the sole issue presented was whether the taxpayer is organized exclusively for charitable purposes under section 3-5(4) of the Use Tax Act (35 ILCS 105/3-5(4)) and section 2-5(11) of the Retailers’ Occupation Tax Act

(35 ILCS 120/2-5(11)). After reviewing the record, it is recommended that the Department's decision be affirmed.

FINDINGS OF FACT:

1. The taxpayer was incorporated in November of 1997 under the General Not for Profit Corporation Act. (Taxpayer Ex. #1)

2. The taxpayer's Articles of Incorporation provide that the purpose of the taxpayer is "to aid, encourage, foster, and promote private citizens, community improvement organizations, community service organizations, foundations, and local government organizations in their efforts to improve and create needed community services and community facilities that will benefit and enhance the quality and enjoyment of life for the rural community residents of ABC COUNTY, Illinois, and rural residents of the adjacent Illinois counties of MMM and XYZ." (Taxpayer Ex. #1)

3. The taxpayer works with local governments to improve the infrastructure of the area and provide services that are not otherwise offered. (Tr. p. 20)

4. The by-laws of the taxpayer provide that "[n]o part of the income of the corporation shall inure to the benefit of any director or officer of the corporation, or any private individual, excepting that reasonable compensation may be paid for services rendered to or for the corporation in accomplishing its purposes." (Taxpayer Ex. #2)

5. The taxpayer does not have any capital, capital stock, or shareholders. (Tr. p. 44)

6. Since its formation, the taxpayer has attempted three separate projects. The first was the construction of a convenient store known as the ABC Mart. The second was

the construction of a community center in the Village of ABC City. The third was the acquisition of land that was given to the ABC Park District. (Tr. pp. 21-23)

7. The community center that the taxpayer constructed in the Village of ABC City houses the City Clerk's office and the police department. It also contains a banquet room and a meeting room. (Tr. pp. 22, 24)

8. Prior to the construction of the community center, the City Clerk and police department had offices in the Village Hall, which needed substantial repair work. A structural engineer stated that it would cost over \$100,000 to repair the Village Hall, and recommended that it be demolished. (Tr. pp. 25, 70)

9. On September 13, 2000, the taxpayer entered into an agreement with the ABC Park District that provides that the taxpayer will convey the community center to the Park District within 60 days of the release of the mortgage indebtedness secured by the property. (Taxpayer Ex. #4)

10. The Village of ABC City occupies approximately 10% of the floor space in the community center. (Tr. pp. 27-28, 73)

11. The ABC Park District holds its monthly meetings at the community center at no cost. The ABC COUNTY Health Department holds screenings there at no cost. The Lion's Club meets there at no cost. (Tr. p. 30-31)

12. There are no restrictions on who can use the community center; it is available for use by anyone. (Tr. pp. 32, 59)

13. The taxpayer provides a Suggested Donation Agreement to the party who wishes to use the community center. The suggested donation for use of the meeting room is \$25. For most events in the banquet room, the suggested donation is \$200 per day.

For benefit events in the banquet room, the party is required to contact the community center for rates. The suggested donation for use of the kitchen facilities is \$50. (Taxpayer Ex. #5)

14. A resident of the Village of ABC MART gave the taxpayer \$347,000 to construct a convenient store and gas station on property owned by the village. The taxpayer gave the store and station to the Village of ABC MART on November 30, 1999. (Taxpayer Ex. #6; Tr. pp. 34, 37-38)

15. The taxpayer had acquired land known as the ABC Home Park in the Village of ABC City. The park had an appraisal value of \$132,000. The taxpayer gave the park to the ABC Park District on September 22, 2000. (Taxpayer Ex. #10; Tr. pp. 40-42)

16. The ABC Home Park consists of two baseball diamonds, pavilions, food stands, picnic tables, and volleyball area. People use the park at their own convenience. There are no restrictions on who may use it. (Taxpayer Ex. #11; Tr. pp. 42-43, 81)

17. The Department's denial of the taxpayer's application for an exemption identification number was admitted into evidence under the certificate of the Director of the Department. (Dept. Group Ex. #1)

#### CONCLUSIONS OF LAW:

The Use Tax Act ("Act") (35 ILCS 105/1 *et seq.*) imposes a tax upon the privilege of using in Illinois tangible personal property purchased at retail from a retailer. 35 ILCS 105/3. Section 3-5 of the Act provides a list of tangible personal property that is exempt from the tax, and includes the following:

“(4) Personal property purchased by a governmental body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes \*\*\*  
On and after July 1, 1987, however, no entity otherwise eligible for this

exemption shall make tax-free purchases unless it has an active exemption identification number issued by the Department.” (35 ILCS 105/3-5(4))

Section 2-5(11) of the Retailers’ Occupation Tax Act (35 ILCS 120/1 *et seq.*) contains a similar provision. The Department’s initial tentative denial of the taxpayer’s claim for an exemption identification number is presumed to be correct, and the taxpayer has the burden of clearly and conclusively proving its entitlement to the exemption. See Wyndemere Retirement Community v. Department of Revenue, 274 Ill.App.3d 455, 459 (2<sup>nd</sup> Dist. 1995); Clark Oil & Refining Corp. v. Johnson, 154 Ill.App.3d 773, 783 (1st Dist. 1987). To prove its case, a taxpayer must present more than its testimony denying the Department’s determination. Sprague v. Johnson, 195 Ill.App.3d 798, 804 (4th Dist. 1990). The taxpayer must present sufficient documentary evidence to support its claim. Id. It is well-settled that tax exemption provisions are strictly construed and all doubts are resolved in favor of taxation. Heller v. Fergus Ford, Inc., 59 Ill.2d 576, 579 (1975).

In order to reach a finding that the taxpayer is organized and operated exclusively for charitable purposes, the following four factors are considered:

1. Whether the benefits derived are for an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare or in some way reducing the burdens of government;
2. Whether the organization has no capital, capital stock or shareholders and earns no profits or dividends but rather derives its funds mainly from public and private charity and holds them in trust for the objects and purposes expressed in its charter;
3. Whether the organization dispenses charity to all who need and apply for it, does not provide gain or profit in a private sense to any person connected with it, and does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it disperses; and
4. Whether the exclusive (primary) use of its property is for charitable purposes.

Methodist Old Peoples Home v. Korzen, 39 Ill.2d 139, 156-57 (1968) These factors are not requirements but are guidelines to be considered in assessing an institution's charitable status. DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461, 468 (2<sup>nd</sup> Dist. 1995)

In the present case, the taxpayer's request for an exemption number is fatally flawed because it failed to present legally sufficient documentary evidence to meet its burden of proof. At first blush the taxpayer appears to be a charitable organization. In exemption cases, however, it is essential to present documentary evidence to support the claim of entitlement to an exemption. Although there was extensive testimony concerning the taxpayer's financial condition, the testimony was not supported with the taxpayer's financial records. There was no documentary evidence concerning the source of the taxpayer's funds and how the taxpayer uses the funds. One of the directors of the taxpayer, Mr. John Doe, testified that the taxpayer received approximately \$350,000 in private and public donations for the construction of the community center. He added that the taxpayer received approximately \$1,000 in donations for the use of the community center, and this money was used to pay utilities, insurance, janitorial services, and maintenance on the heating and cooling systems. Mr. Doe stated that the taxpayer derives its funds mainly from public and private donations.

Unfortunately, this testimony alone is not sufficient to sustain this contention. Because exemption provisions are strictly construed, the taxpayer must support its arguments with proper documentation. (See Sprague at 804.) The taxpayer failed to present financial records to show the source of its income and, as indicated in Methodist Old Peoples Home, whether it has profited from its projects. Without supporting

documentation, the testimony alone is not sufficient to meet the taxpayer's burden of proving its entitlement to the exemption.

It is also unclear whether the taxpayer dispenses charity to all who need and apply for it. Although the park district, health department, and Lion's Club use the community center for free, the Suggested Donation Agreement provides that for "benefit events" in the banquet room, the user must contact the center for the rates. It is not clear what constitutes a benefit event, what the rates are for these events, and who determines them. Although Mr. Doe testified that the taxpayer will allow a party to use the center free of charge if the party is unable to pay a donation, it is not clear why rates would even be necessary for a "benefit event." Mr. Doe also testified that the center has not been open for business for very long, but the exact date that it opened and the parties who have used it have not been specifically stated. In order to determine whether the taxpayer dispenses charity to all who need and apply for it, the taxpayer must disclose the users of the facility and the basis upon which it is determined whether their fee will be waived.

Whether the property of the taxpayer is primarily used for charitable purposes is also questionable. It is unclear from the record whether the community center is used primarily for charitable events.

Finally, although Mr. Doe testified that the taxpayer did not profit from the convenient store while the taxpayer owned it, this contention must be supported by the taxpayer's financial records.

Recommendation:

Because the taxpayer failed to meet its burden, through legally sufficient evidence, showing that it is a charitable organization, it is recommended that the Department's decision be affirmed.

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Linda Olivero  
Administrative Law Judge

Enter: January 17, 2001